

48A C.J.S. Judges § 86

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

F. Vacancy in Office

4. Tenure of Person Selected to Fill Vacancy

§ 86. Vacancies resulting from creation of new offices

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Ordinarily, the tenure of a judge temporarily appointed to fill a newly created office is similar to that of judges temporarily appointed to fill vacancies.

Ordinarily, the tenure of a judge temporarily appointed to fill a newly created office is similar to that of judges temporarily appointed to fill vacancies.¹ In the absence of conflict with constitutional provisions, the matter is within the discretion of the legislature.² Thus, a new appointee may properly hold the office only until the next general election at which judges of the same grade are regularly elected,³ or until the next regular election after his or her appointment,⁴ or until his or her successor is selected and qualifies.⁵

Where statutorily provided, the tenure of a person appointed to a newly created office is for the period specified, beginning from the time of appointment, although such appointment is subject to

legislative confirmation.⁶ Where the constitution fixes the date of the commencement of the full term of a newly created judgeship, the legislature has no power to extend the provisional term of a judge appointed to the position beyond such date.⁷

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Footnotes

- 1 Cal.—*Aggeler v. Dominguez*, 217 Cal. 429, 19 P.2d 241 (1933).
- 2 Mo.—*State ex rel. Jackson v. Emerson*, 39 Mo. 80, 1866 WL 4320 (1866).
- 3 Idaho—*Joy v. Gifford*, 22 Idaho 301, 125 P. 181 (1912).

Next general election for judges
Mo.—*State ex rel. Jackson v. Emerson*, 39 Mo. 80, 1866 WL 4320 (1866).
- 4 Wash.—*Fain v. Chapman*, 89 Wash. 2d 48, 569 P.2d 1135 (1977).

Date of next general election dependent on effective date of statute creating the judgeships
Cal.—*Fields v. Eu*, 18 Cal. 3d 322, 134 Cal. Rptr. 367, 556 P.2d 729 (1976).
- 5 Ky.—*Mullins v. Jones*, 290 Ky. 796, 162 S.W.2d 761 (1942).
- 6 Fla.—*In re Advisory Opinion to Governor*, 101 Fla. 1510, 136 So. 623 (1931).
- 7 Cal.—*People ex rel. Hargrave v. Markham*, 104 Cal. 232, 37 P. 918 (1894).